

SCHEDULE 6

INDEPENDENT CERTIFIER CONTRACT

THIS CONTRACT is made as of the _____ day of December, 2004

AMONG:

ABBOTSFORD HOSPITAL AND CANCER CENTRE INC., a
company incorporated under the laws of British Columbia

("Health Co")

AND:

AHA ACCESS HEALTH ABBOTSFORD LTD. a company
incorporated under the laws of British Columbia

("Project Co")

AND:

BTY QUANTITY SURVEYORS (BC) LTD. a company
incorporated under the laws of British Columbia

("Independent Certifier")

WHEREAS:

A. Health Co and Project Co (collectively and individually, the "PA Parties") have entered into the Project Agreement.

B. Pursuant to the terms of the Project Agreement, the PA Parties wish to appoint the Independent Certifier, and the Independent Certifier wishes to accept such appointment, to perform certain services in connection with the Project Agreement.

C. The PA Parties and the Independent Certifier wish to enter into this Contract in order to record the terms by which the Independent Certifier shall perform such services.

NOW THEREFORE in consideration of the mutual promises and agreements of the PA Parties and the Independent Certifier herein expressed and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the PA Parties and the Independent Certifier covenant and agree as follows:

1. DEFINITIONS

1.1 Definitions

(a) In this Contract including the recitals and Appendices, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise

defined in this Contract) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- (i) “Project Agreement” means that certain agreement entitled “Project Agreement” and made between Health Co and Project Co on or about the date hereof, as the same may be amended from time to time.
- (ii) “Contract Material” means all material:
 - (A) provided to the Independent Certifier or created or required to be created by any PA Party; and
 - (B) provided by or created or required to be created by the Independent Certifier as part of, or for the purpose of, performing the Functions, including documents, equipment, reports, technical information, plans, charts, drawings, calculations, tables, schedules and data (stored and recorded by any means).
- (iii) “Fee” means the fees payable by the PA Parties to the Independent Certifier for the Functions, as such fees are specified and made payable in Appendix B.
- (iv) “Functions” means:
 - (A) all of the functions and obligations conferred on the Independent Certifier under the Project Agreement;
 - (B) all of the functions and obligations conferred on the Independent Certifier under this Contract, including the functions described in Appendix A to this Contract; and
 - (C) all other things or tasks which the Independent Certifier must do to comply with its obligations under this Contract.
- (v) “Functions Variation” is any change to the Functions.
- (vi) “Intellectual Property” means any and all intellectual property rights throughout the world, whether subsisting now or in the future, including rights of any kind in inventions, patents, copyright, trademarks, service marks, industrial designs, integrated circuit topography rights, applications for registration of any of the foregoing, and know-how, trade secrets, confidential information and trade or business names.
- (vii) “PA Parties” has the meaning given in recital A hereto.

2. INTERPRETATION

2.1 Interpretation

- (a) In this Contract, unless the context indicates a contrary intention:

- (i) words denoting the singular number include the plural and vice versa;
- (ii) words denoting individuals include corporations and vice versa;
- (iii) headings are for convenience only and do not affect interpretation;
- (iv) references to Clauses, Sections or Parts are references to Clauses, Sections or Parts of this Contract;
- (v) references to this Contract or any contract, agreement or instrument are deemed to include references to this Contract or such other contract, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (vi) references to any party to this Contract includes its successors or permitted assigns;
- (vii) words denoting any gender include all genders;
- (viii) references to any legislation or to any section or provision of any legislation include any statutory modification or re-enactment of any statutory provision substituted for legislation, section or provision, and ordinances, by laws, regulations and other statutory instruments issued under that legislation, section or provision;
- (ix) a reference to “\$” is to Canadian currency;
- (x) the terms “including” and “include” mean “including” or “include” (as applicable) without limitation; and
- (xi) if a word or phrase is defined, then other parts of speech and grammatical forms of that word or phrase have a corresponding meaning.

2.2 Obligations and Exercise of Rights by PA Parties

- (a) The obligations of the PA Parties under this Contract shall be several.
- (b) Except as specifically provided for in this Contract, including without limitation pursuant to Section 10.5, the rights of the PA Parties under this Contract shall be jointly exercised by each of the PA Parties.

3. ROLE OF THE INDEPENDENT CERTIFIER

3.1 Engagement

- (a) The PA Parties hereby appoint the Independent Certifier, and the Independent Certifier hereby accepts such appointment, to carry out the Functions in accordance with this Contract. The Independent Certifier shall perform the Functions in accordance with this Contract.

- (b) Nothing in this Contract will be interpreted as giving the Independent Certifier any responsibility for performance of the design or construction, or for the certifications of the professionals of record.

3.2 Acknowledgement of Independent Certifier

- (a) The Independent Certifier hereby acknowledges in favour of the PA Parties that it has received a copy of the Project Agreement.

3.3 Standard of Care

- (a) The Independent Certifier must exercise the standard and skill, care and diligence in the performance of the Functions that would be expected of an expert professional experienced in providing services in the nature of the Functions for projects similar to the Project.

3.4 Duty of Independent Judgement

- (a) In exercising its Functions, the Independent Certifier must:
- (i) act impartially, honestly and independently in representing the interests of both PA Parties in accordance with the terms of the Project Agreement and this Contract;
 - (ii) act reasonably and professionally;
 - (iii) act in a timely manner:
 - (A) in accordance with the times prescribed in this Contract and the Project Agreement; or
 - (B) where no times are prescribed, within ten Business Days or such earlier time so as to enable the PA Parties to perform their respective obligations under the Project Agreement; and
 - (iv) act in accordance with the joint directions of the PA Parties provided that the directions are not inconsistent with the other terms of this Contract or the terms of the Project Agreement and do not vary or prejudice the Independent Certifier's authority or responsibilities or the exercise by the Independent Certifier of its professional judgement under this Contract.
- (b) Although the Independent Certifier may take account of any opinions or representations made by the PA Parties, the Independent Certifier shall not be bound to comply with any opinions or representations made by either of them in connection with any matter on which the Independent Certifier is required to exercise its professional judgement.
- (c) The Independent Certifier acknowledges that the PA Parties may rely on the Functions, including determinations, findings and certifications made by the Independent Certifier, and accordingly, the Independent Certifier will use its best skill and judgment in providing the Functions.

3.5 Authority to Act

- (a) The Independent Certifier:
- (i) is an independent consultant and is not, and must not purport to be, a partner, joint venturer or agent of any PA Party;
 - (ii) other than as expressly set out in this Contract or the Project Agreement, has no authority to give any directions to a PA Party or its officers, directors, members, employees, contractors, consultants or agents; and
 - (iii) has no authority to waive or alter any terms of the Project Agreement, nor to discharge or release a party from any of its obligations under the Project Agreement unless jointly agreed by the PA Parties in writing.

3.6 Knowledge of the PA Parties' Requirements

- (a) The Independent Certifier warrants that:
- (i) it has informed and will be deemed to have informed itself fully of the requirements of the Project Agreement;
 - (ii) it will inform itself fully of the requirements of such other documents and materials as may become relevant from time to time to the performance of the Functions;
 - (iii) without limiting Sections 3.6(a)(i) or 3.6(a)(ii), it has and will be deemed to have informed itself fully of all time limits and other requirements for any Function which the Independent Certifier carries out under the Project Agreement and this Contract;
 - (iv) it has and will be deemed to have informed itself completely of the nature of the work necessary for the performance of the Functions and the means of access to and facilities at the Facility and Site including restrictions on any such access or protocols that are required; and
 - (v) it has satisfied itself as to the correctness and sufficiency of its proposal for the Functions and that the Fee covers the cost of complying with all of the obligations under this Contract and of all matters and things necessary for the due and proper performance and completion of the Functions.

3.7 Co-ordination and Information by Independent Certifier

- (a) The Independent Certifier must:
- (i) fully co-operate with the PA Parties;
 - (ii) carefully co-ordinate the Functions with the work and services performed by the PA Parties;

- (iii) without limiting its obligations under Sections 3.4 and 3.7(a)(ii), perform the Functions so as to avoid unreasonably interfering with, disrupting or delaying the work and services performed by the PA Parties; and
- (iv) provide copies to all PA Parties of all reports, communications, certificates and other documentation that it provides to any PA Party.

3.8 Conflict of Interest

- (a) The Independent Certifier warrants that:
 - (i) at the date of signing this Contract, no conflict of interest exists or is likely to arise in the performance of its obligations under this Contract; and
 - (ii) if, during the term of this Contract, any such conflict or risk of conflict of interest arises, the Independent Certifier will notify the PA Parties immediately in writing of that conflict or risk of conflict and take such steps as may be required by each of the PA Parties to avoid or mitigate that conflict or risk.

3.9 Independent Certifier Personnel

- (a) Subject to Section 3.9(b), the Independent Certifier shall use the partners, directors or employees described in Appendix C hereto in connection with the performance of the Functions and such persons' services shall be available for so long as may be necessary to ensure the proper performance by the Independent Certifier of the Functions. Such persons shall have full authority to act on behalf of the Independent Certifier for all purposes in connection with this Contract.
- (b) None of the persons listed in Appendix C shall be removed or replaced unless he/she ceases to work as a partner in or director or employee of the Independent Certifier or he/she is unable to work because of death or illness. The Independent Certifier shall notify the PA Parties of any such circumstances and shall be responsible for finding a replacement who shall previously have been approved in writing by the PA Parties.

4. ROLE OF THE PA PARTIES

4.1 Assistance

- (a) The PA Parties agree to co-operate with and provide reasonable assistance to the Independent Certifier to familiarize the Independent Certifier with all necessary aspects of the Project to enable the Independent Certifier to carry out its obligations under this Contract.

4.2 Instructions in Writing

- (a) All instructions to the Independent Certifier by the PA Parties shall be given in writing.

4.3 Information and Services

- (a) The PA Parties shall make available to the Independent Certifier, as soon as practicable from time to time, all information, documents and particulars necessary for the

Independent Certifier to carry out the Functions, including such information, documents and particulars required in order for the Independent Certifier to determine whether Substantial Completion and Final Completion have occurred, and shall provide copies of all such information, documents and particulars to the other Party hereto.

4.4 Additional Information

- (a) If any information, documents or particulars are reasonably required to enable the Independent Certifier to perform the Functions and have not been provided by the PA Parties, then:
- (i) the Independent Certifier must give notice in writing to Project Co's Representative or Health Co's Representative, as the case may be, of the details of the information, documents or particulars demonstrating the need and the reasons why they are required; and
 - (ii) Project Co or Health Co, as the case may be, must arrange the provision of the required information, documents or particulars.

4.5 Right to Enter and Inspect

- (a) Upon giving reasonable notice to Project Co's Representative, the Independent Certifier (and any person authorized by it) may enter and inspect the Site, Facility or Works at any reasonable time in connection with the exercise or purposed exercise of rights under this Contract, subject to:
- (i) observance of the reasonable rules of Project Co as to safety and security for the Site, Facilities and Works;
 - (ii) not causing unreasonable delay to the carrying out of the Works by reason of its presence at the Site, Facilities and Works; and
 - (iii) not causing any damage to the Site, Facility or Works.

4.6 PA Parties Not Relieved

- (a) Neither PA Party shall be relieved from performing or observing its obligations, or from any other liabilities, under the Project Agreement as a result of either the appointment of, or any act or omission by, the Independent Certifier.

4.7 PA Parties not Liable

- (a) On no account will a PA Party be liable to another PA Party for any act or omission by the Independent Certifier whether under or purportedly under a provision of the Project Agreement, this Contract or otherwise, provided that any such act or omission shall not extinguish, relieve, limit or qualify the nature or extent of any right or remedy of either PA Party against or any obligation or liability of either PA Party to the other PA Party which would have existed regardless of such act or omission.

5. QUALITY

5.1 Quality Project Plan

- (a) The Independent Certifier must:
- (i) develop and implement a quality project plan identifying the processes and outcomes of the Functions that complies with all requirements of the Independent Certifier's quality assurance accreditation; and is otherwise satisfactory to each of Health Co's Representative and Project Co's Representative,
 - (ii) within 14 days after the date of this Contract, provide such quality project plan to each of Health Co's Representative and Project Co's Representative;
 - (iii) if satisfactory to each of Health Co's Representative and Project Co's Representative, implement such quality project plan; and
 - (iv) if not satisfactory to each of Health Co's Representative and Project Co's Representative, within 7 days after receiving notice thereof from either PA Party to that effect, revise and resubmit the quality project plan to each of Health Co's Representative and Project Co's Representative, and implement it if satisfactory to each of Health Co's Representative and Project Co's Representative.

5.2 Quality Project Plan not to Relieve Independent Certifier

- (a) The Independent Certifier will not be relieved of any responsibilities or obligations in respect of the performance of the Functions and will remain solely responsible for them notwithstanding:
- (i) the obligation of the Independent Certifier to develop and implement a quality project plan; or
 - (ii) any comment or direction upon, review or acceptance of, approval to proceed with or request to vary any part of the quality project plan by either Health Co's Representative or Project Co's Representative.

6. SUSPENSION

6.1 Notice

- (a) The Functions (or any part) may be suspended at any time by the PA Parties:
- (i) if the Independent Certifier fails to comply with its obligations under this Contract, immediately by the PA Parties giving joint notice in writing to the Independent Certifier; or
 - (ii) in any other case, by the PA Parties giving seven days joint notice in writing to the Independent Certifier.

6.2 Costs of Suspension

- (a) The Independent Certifier will:
- (i) subject to the Independent Certifier complying with Article 9, be entitled to recover the extra costs incurred by the Independent Certifier by reason of a suspension directed under Section 6.1(a)(ii) valued as a Functions Variation under Section 9; and
 - (ii) have no entitlement to be paid any costs, expenses, losses or damages arising from a suspension under Section 6.1(a)(i).

6.3 Recommencement

- (a) The Independent Certifier must immediately recommence the carrying out of the Functions (or any part) on receipt of a joint written notice from the PA Parties requiring it to do so.

7. INSURANCE AND LIABILITY**7.1 Independent Certifier's Professional Indemnity Insurance**

- (a) The Independent Certifier must have in place:
- (i) professional liability insurance:
 - (A) in the amount of **[*DELETION]** per claim and in the aggregate, a deductible of not more than **[*DELETION]** per claim and from an insurer and on terms satisfactory to each of the PA Parties;and
 - (B) covering liability which the Independent Certifier might incur as a result of a breach by it of its obligations owed by the Independent Certifier in a professional capacity to the PA Parties, or either of them, or to PCL Constructors Westcoast Inc. (as Design-Builder under the Design-Build Stipulated Price Agreement dated on or about the date hereof) under or in connection with this Contract or the provision of the Functions; and
 - (ii) comprehensive general liability insurance in the amount of **[*DELETION]** per claim and in the aggregate, no deductible for personal injury or bodily injury, a deductible of not more than **[*DELETION]** per occurrence for property damage and from an insurer and on terms satisfactory to each of the PA Parties.
- (b) The Independent Certifier must provide copies of its insurance policies to each of the PA Parties upon request.

7.2 Workers' Compensation Insurance

- (a) The Independent Certifier must, at its own cost, insure its liability (including its common law liability) as required under any applicable workers compensation statute or regulation in relation to its employees engaged in the Functions.

8. PAYMENT FOR SERVICES

8.1 The Fee

- (a) In consideration of the Independent Certifier performing the Functions in accordance with this Contract, the PA Parties shall pay the Independent Certifier the Fee.
- (b) The Fee includes all taxes (except for Goods and Services Tax), overheads and profit to perform the Functions.

8.2 Payment of Fee

- (a) The PA Parties shall each pay half the Fee to the Independent Certifier in accordance with the payment schedule specified in Appendix B. The obligation on each PA Party to each pay half of the Fee to the Independent Certifier is not subject to joint and severable liability and neither PA Party shall have any liability whatsoever for the non payment by the other of any fees or costs payable by it under this Contract.
- (b) The PA Parties acknowledge and agrees that if any amount due and payable by the PA Parties to the Independent Certifier is outstanding, the Independent Certifier shall not have any obligation to make any certification under the Project Agreement.

9. FUNCTIONS VARIATIONS

9.1 Notice of Functions Variation

- (a) If the Independent Certifier believes, other than a "Functions Variation Order" under Section 9.4(c), that any direction by the PA Parties constitutes or involves a Functions Variation it must:
 - (i) within 7 days after receiving the direction and before commencing work on the subject matter of the direction, give notice to the PA Parties that it considers the direction constitutes or involves a Functions Variation; and
 - (ii) within 21 days after giving the notice under Section 9.1(a)(i), submit a written claim to each of Health Co's Representative and Project Co's Representative which includes detailed particulars of the claim, the amount of the claim and how it was calculated.
- (b) Regardless of whether the Independent Certifier considers that such a direction constitutes or involves a Functions Variation, the Independent Certifier must continue to perform the Functions in accordance with this Contract and all directions, including any direction in respect of which notice has been given under this Section.

9.2 No Adjustment

- (a) If the Independent Certifier fails to comply with Section 9.1, the Fee will not be adjusted as a result of the relevant direction.

9.3 External Services

- (a) Except as hereinafter provided, the Functions are to be performed by the Independent Certifier's internal personnel. In the event that external personnel are required for expert opinion with respect to a Functions Variation, then, with the prior approval of the PA Parties, any additional fees relating to such external personnel will be payable by the PA Parties at the agreed upon amount.

9.4 Functions Variation Procedure

- (a) Health Co's Representative and Project Co's Representative may jointly issue a document titled "Functions Variation Price Request" to the Independent Certifier which will set out details of a proposed Functions Variation which the PA Parties are considering.
- (b) Within 7 days after the receipt of a "Functions Variation Price Request", the Independent Certifier must provide each of Health Co's Representative and Project Co's Representative with a written notice in which the Independent Certifier sets out the effect which the proposed Functions Variation will have on the Fee.
- (c) Each of Health Co's Representative and Project Co's Representative may then jointly direct the Independent Certifier to carry out a Functions Variation by written document titled "Functions Variation Order" which will state either that:
- (i) the Fee is adjusted as set out in the Independent Certifier's notice; or
 - (ii) the adjustment (if any) to the Fee will be determined under Section 9.5.

9.5 Cost of Functions Variation

- (a) Subject to Section 9.2, the Fee will be adjusted for all Functions Variations or suspensions under Section 6.1(a)(ii) carried out by the Independent Certifier by:
- (i) the amount (if any) stated in the "Functions Variation Order" in accordance with Section 9.4(c);
 - (ii) if Section 9.5(a)(i) is not applicable, an amount determined pursuant to the fee schedule for Functions Variations in Appendix B; or
 - (iii) where such rates or prices are not applicable, a reasonable amount to be agreed between the PA Parties and the Independent Certifier or, failing agreement, determined by Health Co's Representative and Project Co's Representative jointly.
- (b) Any reductions in the Fee shall be calculated on the same basis as any increases.

10. TERM AND TERMINATION

10.1 Term

- (a) Subject to earlier termination, this Contract will commence on the date of the Project Agreement and continue in full force until:
- (i) Final Completion; or
 - (ii) such later date as may be mutually agreed between the PA Parties and the Independent Certifier.

10.2 Notice of Breach

- (a) If the Independent Certifier commits a breach of this Contract, the PA Parties may give written notice to the Independent Certifier:
- (i) specifying the breach; and
 - (ii) directing its rectification in the period specified in the notice being a period not less than 7 days from the date of service of the notice.

10.3 Termination for Breach

- (a) If the Independent Certifier fails to rectify the breach within the period specified in the notice issued under Section 10.2, the PA Parties may, without prejudice to any other rights of the PA Parties or either of them, immediately terminate this Contract.

10.4 Termination for Financial Difficulty

- (a) The PA Parties may, without prejudice to any other rights which the PA Parties or either of them may have, terminate this Contract immediately if:
- (i) events have occurred or circumstances exist which, in the opinion of the PA Parties, may result in or have resulted in insolvency or the control of the Independent Certifier passing to another body or corporation; or
 - (ii) the Independent Certifier has communications with its creditors with a view to entering into, or enters into, any form of compromise, arrangement or moratorium of any debts whether formal or informal, with its creditors.

10.5 Termination for Convenience

- (a) Notwithstanding anything to the contrary in this Contract, either of the PA Parties may at any time terminate this Contract upon 30 days written notice to the Independent Certifier. The PA Parties and the Independent Certifier agree that, notwithstanding the 30 days' notice of termination, the Independent Certifier shall continue on a day-to-day basis thereafter until a new Independent Certifier is appointed.

10.6 Independent Certifier's Rights upon Termination for Convenience

- (a) Upon a termination under Section 10.5, the Independent Certifier will:
- (i) be entitled to be reimbursed by the PA Parties for the value of the Functions performed by it to the date of termination; and
 - (ii) not be entitled to any damages or other compensation in respect of the termination and (without limitation) any amount in respect of:
 - (A) the lost opportunity to earn a profit in respect of the Functions not performed at the date of termination; and
 - (B) any lost opportunity to recover overheads from the turnover which would have been generated under this Contract but for it being terminated.

10.7 Procedure upon Termination

- (a) Upon completion of the Independent Certifiers engagement under this Contract or earlier termination of this Contract (whether under Section 10.3, 10.4 or 10.5 or otherwise) the Independent Certifier must:
- (i) co-operate with the PA Parties;
 - (ii) hand to the PA Parties all Contract Material and all other information concerning the Project held or prepared by the Independent Certifier during the execution of work under this Contract; and
 - (iii) as and when required by the PA Parties, meet with them and such other persons nominated by them with a view to providing them with sufficient information to enable the PA Parties to execute the Project or the persons nominated to provide the Functions.

10.8 Effect of Termination

- (a) Except as otherwise expressly provided in this Contract, termination of this Contract shall be without prejudice to any accrued rights and obligations under this Contract as at the date of termination (including the right of the PA Parties to recover damages from the Independent Certifier).

10.9 Survival

- (a) Termination of this Contract shall not affect the continuing rights and obligations of the PA Parties and the Independent Certifier under Sections 7, 8, 10.6, 10.7, 10.8, 11, 12.7, 12.8 and this Section or under any other Section which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

11. INDEMNITY

11.1 PA Parties to Save Independent Certifier Harmless

- (a) The PA Parties hereby indemnify and save the Independent Certifier completely harmless from any actions, causes of action, suits, debts, costs, damages, expenses, claims and demands whatsoever, at law or in equity, arising directly or indirectly in whole or in part out of any action taken by the Independent Certifier within the scope of its duties or authority hereunder. The indemnity provided under this Section 11.1 shall not extend to any material breach of any of the terms of this Contract or any negligent or unlawful act or omission or wilful misconduct of the Independent Certifier or any of its employees, servants, agents or persons for whom it is in law responsible, (in respect of which the Independent Certifier shall indemnify the PA Parties, as referred to in Section 11.2), and shall not extend to any action taken by the Independent Certifier outside the scope of authority set forth in this Contract or any part thereof and shall not extend to any debt, cost, expense, claim or demand for which insurance proceeds are recoverable by the Independent Certifier. This indemnity shall survive the termination of this Contract.

11.2 Independent Certifier to Save PA Parties Harmless

- (a) The Independent Certifier hereby indemnifies and saves the PA Parties, and their affiliated entities, subsidiaries and their respective directors, officers, employees, agents, permitted successors and assigns, completely harmless from any actions, causes of action, suits, debts, costs, damages, expenses, claims and demands or liability, and all damages, costs, and expenses whatsoever, at law or in equity, arising directly or indirectly in whole or in part out of any action taken by the Independent Certifier by reason of any breach of this Contract or any part or parts hereof by the Independent Certifier, its employees, servants or persons for whom it is in law responsible or by reason of any negligent or unlawful act or omission or wilful misconduct of the Independent Certifier, its employees, servants or persons for whom it is in law responsible. The indemnity provided under this Section 11.2 shall not extend to any negligent or unlawful act or omission or wilful misconduct of the PA Parties or any of its employees, servants, agents or persons for whom it is responsible (in respect of which the PA Parties shall indemnify the Independent Certifier, as referred to in Section 11.1), nor shall it extend to any debt, cost, expense, claim or demand to the extent that insurance proceeds are recoverable by the PA Parties. This indemnity shall survive the termination of this Contract.

12. GENERAL

12.1 Entire Agreement

- (a) This Contract and the Project Agreement constitute the entire agreement between the PA Parties and the Independent Certifier and supersede all communications, arrangements and agreements, either oral, written, made or entered into prior to the date of this Contract between the PA Parties and the Independent Certifier with respect to the subject matter of this Contract.

12.2 Negation of Employment

- (a) The Independent Certifier, its officers, directors, members, employees, servants and agents and any other persons engaged by the Independent Certifier in the performance of the Functions will not by virtue of this Contract or the performance of the Functions become in the service or employment of the PA Parties for any purpose.
- (b) The Independent Certifier will be responsible for all matters requisite as employer or otherwise in relation to such officers, directors, members, employees, servants and agents and other persons who are engaged by the Independent Certifier.

12.3 Waiver

- (a) Failure by any PA Party or the Independent Certifier to enforce a provision of this Contract will not be construed as a waiver by that PA Party or the Independent Certifier of any right in respect of that provision, or any other provisions of this Contract.

12.4 Notices

- (a) Any document which is to be or may be issued or given to or served upon the PA Parties or the Independent Certifier under this Contract will be deemed to have been sufficiently issued or given to or served if:
 - (i) it is delivered or sent by commercial courier, upon receipt;
 - (ii) it is sent by fax, upon confirmation of a successful transmission by a transmission report received by the sender,

to the addresses set out below:

If to Project Co	AHA Access Health Abbotsford Ltd. Three Bentall Centre 595 Burrard Street, Suite 2373 Vancouver, British Columbia V7X 1J1 Fax No.: 604.484.7165 Attention: President
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If to Health Co	Abbotsford Hospital and Cancer Centre Inc. c/o West Annex, 2179 McCallum Road Abbotsford, BC V2S 3P1 Fax No.: 604 557 2964 Attn.: Mike Marasco
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If to Independent Certifier

BTY Quantity Surveyors (BC) Ltd.
2288 Manitoba Street
Vancouver, British Columbia, V5Y 4B5

Fax No.: 604.734.3136
Attention: **Gordon W. Smith, Principal**

- (b) Any party may change its address for notice by notice given to the other parties in accordance with this Section.

12.5 Transfer and Assignment

- (a) The Independent Certifier:
- (i) must not assign, transfer, mortgage, charge or encumber any right or obligation under this Contract without the prior written consent of the PA Parties, which each PA Party may give or withhold in its absolute discretion; and
 - (ii) agrees that any assignment, transfer, mortgage, charge or encumbrance will not operate to release or discharge the Independent Certifier from any obligation or liability under this Contract.
- (b) For the purposes of this Section, an assignment will be deemed to have occurred where there is a Change in Control of the Independent Certifier after the date of this Contract.
- (c) Each of the PA Parties may assign, transfer, mortgage, charge or encumber any right or obligation under this Contract in accordance with the terms of the Project Agreement.

12.6 Governing Laws and Attornment

- (a) This Contract will be governed by and construed in accordance with the laws of the Province of British Columbia and the federal laws of Canada applicable therein without regard to conflicts of law principles that would apply a different body of law, and the PA Parties and the Independent Certifier hereby irrevocably submit and attorn to the exclusive jurisdiction of the courts of that Province and all courts competent to hear appeals therefrom with respect to any action, suit, proceeding or dispute in connection with this Contract.

12.7 Confidentiality

- (a) The Independent Certifier must ensure that:
- (i) neither it nor any of its officers, directors, members, employees, servants and agents disclose, or otherwise make public, any Contract Material or any other information or material acquired in connection with or during the performance of the Functions without prior written approval of the PA Parties; and

- (ii) no Contract Material is used, copied, supplied or reproduced for any purpose other than for the performance of the Functions under this Contract.
- (b) The PA Parties may at any time require the Independent Certifier to give and to arrange for its officers, directors, members, employees, servants and agents engaged in the performance of the Functions to give written undertakings, in the form of confidentiality agreements on terms required by the PA Parties, relating to the non disclosure of confidential information, in which case the Independent Certifier must promptly arrange for such agreements to be made.

12.8 Contract Material

- (a) The PA Parties and the Independent Certifier agree that the Independent Certifier does not and will not have any rights, including any Intellectual Property, in any Contract Material provided to the Independent Certifier or created or required to be created by any PA Party.
- (b) As between the PA Parties and the Independent Certifier, all title and ownership, including all Intellectual Property, in and to the Contract Material created or required to be created by the Independent Certifier as part of, or for the purposes of performing the Functions, is hereby assigned jointly to the PA Parties on creation, or where such title, ownership and Intellectual Property cannot be assigned before creation of the Contract Material, it will be assigned to the PA Parties on creation. In addition, to the extent that copyright may subsist in such Contract Material so created by the Independent Certifier, the Independent Certifier hereby waives all past, present and future moral rights therein and the Independent Certifier shall ensure that any agent or employee of Independent Certifier shall have waived all such moral rights. The PA Parties acknowledge and agree that as between the PA Parties, title, ownership and other rights to the foregoing shall be governed by the Project Agreement.
- (c) The Independent Certifier will do all such things and execute all such documents as reasonably requested by either of the PA Parties in order to confirm or perfect the assignment of Intellectual Property in the Contract Material referred to in Section 12.8(b).

12.9 Time of the Essence

- (a) Time will be of the essence of this Contract and of the transactions contemplated by this Contract.

12.10 Amendment

- (a) No change or modification of this Contract will be valid unless it is in writing and signed by each party to this Contract.

12.11 Severability

- (a) If any provision of this Contract shall be declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability or legality of the remaining provisions of this Contract.

12.12 Enurement

- (a) Subject to the restrictions on transfer contained in this Contract, this Contract will enure to the benefit of and be binding on the parties and their respective heirs, executors, administrators, successors and assigns.

12.13 Counterparts

- (a) This Contract may be executed in any number of counterparts and all counterparts taken together will constitute one and the same instrument.

IN WITNESS WHEREOF Health Co, Project Co and the Independent Certifier have executed this Contract.

EXECUTED AND DELIVERED by)
ABBOTSFORD HOSPITAL AND)
CANCER CENTRE INC. acting by)
)

Authorized Signatory)

Full Name)

Authorized Signatory)

Full Name)

EXECUTED AND DELIVERED by **AHA**)
ACCESS HEALTH ABBOTSFORD LTD.)
acting by)
)

Authorized Signatory)

Full Name)

Authorized Signatory)

Full Name)

Witness (Signature)

Witness (Full Name)

Witness (Signature)

Witness (Full Name)

Witness (Signature)

Witness (Full Name)

Witness (Signature)

Witness (Full Name)

EXECUTED AND DELIVERED by **BTY**)
QUANTITY SURVEYORS (BC) LTD.)
acting by)
)

Authorized Signatory)
)

Full Name)

Witness (Signature)

Witness (Full Name)

Authorized Signatory)
)

Full Name)
)

Witness (Signature)

Witness (Full Name)

**APPENDIX A
FUNCTIONS**

1. FUNCTIONS

- 1.1** Without limiting the other provisions of this Contract and the Project Agreement, the Independent Certifier shall provide the following:
- (a) Receive and monitor drawings and other Project Data related to Design Development as necessary for the Independent Certifier to be informed as to the progress of the Works and to provide an opinion in the event of a dispute related to development of the design.
 - (b) Receive and monitor progress reports as necessary for the Independent Certifier to be informed as to the progress of the Works.
 - (c) Review information relating to claims for extensions of time and compensation.
 - (d) Attend meetings and participate as necessary in the activities of the Project Management Oversight Committee.
 - (e) Review the draft Final Commissioning Program and the detailed tests, test methodology and expected test results proposed by Project Co and provide comments, including to report on the effectiveness of the Final Commissioning Program, to identify any errors or omissions, and to report any risks.
 - (f) Monitor the Commissioning Tests (as indicatively described in Schedule 17 - Outline Commissioning Program) and other tests, including re-tests, to be performed as set out in the Final Commissioning Program or as otherwise required for Project Co to achieve Substantial Completion and Final Completion.
 - (g) Prior to any certification, consider the views and comments of both Project Co and Health Co in relation to the satisfaction of the conditions for certification.
 - (h) during Construction, conduct inspections of the Work as the Independent Certifier determines is required to be satisfied that the Works are proceeding in accordance with the requirements of the Project Agreement.
 - (i) Undertake “cost to complete” and other relevant analyses, including to certify the construction payments in relation to the work completed.
 - (j) Certify holdback amounts to be maintained relating to lien holdbacks and assist in dealing with liens, including with respect to certifications of the expiry of lien holdbacks.
 - (k) Review relevant documentation, including floor area schedules, certificates and approvals, Permits, Licences and Approvals, certifications, test results, quality assurance audits, letters of assurance from professionals, schedules of equipments, staff profile schedules provided to the Independent Certifier pursuant to the Project Agreement, including the Final Commissioning Program.

- (l) Consider and monitor the requirements, progress and results of all Project Co Commissioning and Health Co Operational Commissioning.
- (m) Upon receipt of notice from Project Co requesting the issuance of the Substantial Completion Certificate or the Final Completion Certificate, as applicable, consider such request and within the time period set out in the Project Agreement either:
 - (i) issue the applicable certificate; or
 - (ii) issue a report detailing the matters that the Independent Certifier considers are required to be performed prior to issuing the applicable certificate.
- (n) Upon notice from Project Co that the matters required to be performed prior to issuing the applicable certificate have been completed, the Independent Certifier shall re-inspect the Works or re-consider the matters specified to be performed, and shall repeat the procedures in Section 1.1(m) of this Appendix until the issuance of the applicable certificate.
- (o) In relation to Substantial Completion, the Independent Certifier shall assist as required in the preparation of the Minor Deficiency List and the value of items to be completed or rectified.
- (p) Provide any determinations in respect of the Review Procedure, Variations, extensions of time and additional compensation and in the event of Dispute under the Project Agreement, which determinations may be subject to final resolution between the PA Parties pursuant to the Dispute Resolution Procedure.
- (q) Provide advice on other matters that may arise that both PA Parties may jointly require.

**APPENDIX B
FEE**

1. Functions

<u>Function</u>	<u>Fee (excluding GST)</u>
(a) General Services (payable for the period between Financial Close and Substantial Completion)	[*DELETION]
(b) Delivery of Substantial Completion Certificate	[*DELETION]
(c) Delivery of Final Completion Certificate	[*DELETION]
(d) Claims and Disputes (1)	[*DELETION]

(1) Based on 1,312 man-hours (assuming assignment of architectural, structural, mechanical, electrical, quantity surveyor one day per month) to be billed monthly on an hourly basis.

2. Disbursements

The Disbursements (as defined below) reasonably incurred by the Independent Certifier directly on account of and specifically related to the Functions and which would not otherwise be incurred but for the Functions shall be paid within 30 days of Project Co's receipt of invoices therefor. "Disbursements" shall mean:

- (a) travel and subsistence expenses; and
- (b) reasonable charges for long distance telephone and facsimile communications, courier services, expressage, drawing production and photocopying incurred in relation to the performance of the Functions.

**APPENDIX C
INDEPENDENT CERTIFIER PERSONNEL**

The Independent Certifier shall use the following individuals in connection with the performance of the Functions:

- (a) Joe Rekab, Principal
- (b) Gord Smith, Principal
- (c) Patrick Gunn, Principal Peer Review
- (d) Ellis Pang, Senior QS
- (e) Eldon Lau, Senior QS
- (f) Dan Reidy, Senior QS
- (g) Fred Scheibe, Mechanical QS
- (h) Art Lum, Electrical QS
- (i) Leslie Fowler, QS Support